

July 6, 2021

**MEMO ENDORSED**

**VIA ECF**

The Honorable Katherine Polk Failla  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2103  
New York, NY 10007

RE: *Baker v. German, et al.*,  
No. 15 Civ. 07296 (KPF) (S.D.N.Y.)

Dear Judge Failla:

Pursuant to Section 9.B. and 9.C. of Your Honor's Individual Rules of Practice in Civil Cases, Plaintiff respectfully seeks leave to maintain under seal Plaintiff's Memorandum of Law in Opposition to Defendants' Motions *in Limine* (ECF No. 139) and for leave to file a redacted version of the same memorandum (ECF No. 142) that omits references to information that Defendants have designated as "Confidential" pursuant to the Stipulation of Confidentiality and Protective Order (ECF No. 93).

As the Court is aware, the Second Circuit has recognized that the right of public access to judicial documents is not absolute and "the court must balance competing considerations against it." *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). For instance, documents may be sealed where "closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Id.*; *see also Nixon v. Warner Commc'ns., Inc.*, 435 U.S. 589, 599 (1978) ("[T]he decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case."); *cf. Burke v. Glanz*, No. 11-cv-720, 2013 WL 211096, at \*4 (N.D. Okla. Jan. 18, 2013) ("Courts should be wary of modifying a protective order where a party has complied with discovery in reliance on the agreement.").

On July 2, 2021, Plaintiff filed his Memorandum of Law in Opposition to Defendants' Motions *in Limine* (ECF No. 139). On July 6, 2021, Defendants' counsel contacted the undersigned, requesting that the memorandum be filed under seal because it contains information from documents produced by Defendants that Defendants had designated as "Confidential." Plaintiff has filed a copy of the memorandum with proposed redactions pursuant to Rule 9.B.i of Your Honor's Individual Rules of Practice in Civil Cases (ECF No. 142) and understands that the previously-filed memorandum (ECF No. 139) has been temporarily placed under seal. Plaintiff respectfully seeks leave to maintain the filed memorandum under seal and to file a redacted version of the same memorandum that omits references to information that Defendants have designated as "Confidential."

Respectfully submitted,

By: /s/ Tansy Woan  
Tansy Woan

*Attorney for Plaintiff Michael  
Smith-Baker*

Application GRANTED.

Dated: July 7, 2021  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE